



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNSD, MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to return the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Only the tenants appeared at the hearing. The tenants provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on June 28, 2016. The tenant had provided tracking information from Canada Post indicating the mail had been signed for on June 30, 2016. I find the Landlord has been duly served in accordance with the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to monetary award as compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenants' undisputed testimony is as follows. The tenancy began on October 1, 2015 and ended on May 31, 2016. The tenants were obligated to pay \$1325.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$662.00 security deposit. The tenants testified that in April 2016 the landlord had advised them that she was attempting to sell the unit. The tenants testified that the landlord and her agent had been aggressive in their behaviour and made many unreasonable demands on them, in particular accessing the unit on extremely short notice and making demands as to how the unit was to be presented.

The tenants testified that on May 24, 2016 the tenants received a 2 Month Notice to End Tenancy for Landlords' Use of Property based on the fact the property had been sold and that the new owners wanted vacant possession so that they could move into it themselves. The tenants testified that during a phone conversation with the landlord on the evening of May 24, 2016; the landlord demanded that they move out by the end of May 2016. The tenants testified that the realtor and the landlords' aggressive behaviour began to escalate to the point where they both sent threatening text messages and contacted the police. The tenants testified that they vacated the unit by May 31, 2016 as the landlord requested as they didn't wish to deal with the landlord or the realtor any further. The tenants testified that they did not receive one month's rent as compensation as per the notice nor did they receive their security deposit. The tenants' filed for dispute resolution on June 27, 2016. The tenants provided their forwarding address in writing to landlord on June 28, 2016.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 51 of the Act addresses the matter of the notice to end tenancy as follows:

#### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord

on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the above, the undisputed testimony of the tenants and the documentation before me, I find that the tenants are entitled to one month's rent in the amount of \$1325.00.

Section 38 of the Act addresses the issue of the security deposit as follows:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord has not returned the deposit nor have they made application to retain it. It is worth noting that the tenants filed an application for dispute resolution prior to providing their forwarding address in writing, hence the doubling provision under section 38 of the Act does not apply.

Based on the above, the undisputed testimony of the tenants and the documentation before me, I find that the tenants are also entitled to the return of the security deposit of \$662.00.

As the tenants have been successful in this application they are entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenants have established a claim for \$2087.00. I grant the tenants an order under section 67 for the balance due of \$2087.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 05, 2017

---

Residential Tenancy Branch